

**PUBLIC MATTER**

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FILED

SEP 29 2010

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

ZACHARY IAN GONZALEZ,
No. 259663,

A Member of the State Bar

) Case Nos. 09-O-13589, 09-O-13845,
) 09-O-17413, 09-O-18914, 09-O-19279,
) 09-O-19316, 10-O-01289, 10-O-03162,
) 10-O-03507, 10-O-03674, 10-O-03809**NOTICE OF DISCIPLINARY CHARGES****NOTICE - FAILURE TO RESPOND!**

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD

1 OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM
2 THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME

3 SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL
4 SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED,
5 AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR
6 TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION
7 FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR
8 COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO
9 COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE
10 BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF
11 PROCEDURE FOR STATE BAR COURT PROCEEDINGS.

12 **NOTICE PURSUANT TO RULE 481, RULES OF PROCEDURE**

13 ALL PROCEEDING COUNTS REFER TO FACTUAL ALLEGATIONS IN
14 THE STATE BAR'S APPLICATION FOR INVOLUNTARY INACTIVE
15 ENROLLMENT FILED AGAINST RESPONDENT IN THE CASE
16 ENTITLED IN THE MATTER OF ZACHARY IAN GONZALEZ, STATE
17 BAR COURT CASE NO. 10-TE-02282 ("THE 6007(C) CASE."). THE
18 STATE BAR COURT ISSUED AN ORDER ENROLLING RESPONDENT
19 INACTIVE IN THE 6007(C) CASE, EFFECTIVE AUGUST 16, 2010.

20 The State Bar of California alleges:

21 **JURISDICTION**

22 1. ZACHARY IAN GONZALEZ ("Respondent") was admitted to the practice of
23 law in the State of California on December 8, 2008, was a member at all times pertinent to these
24 charges, and is currently a member of the State Bar of California.

25 **BACKGROUND ALLEGATION**

26 2. During the time period described in this NOTICE OF DISCIPLINARY
27 CHARGES, Respondent has practiced under the following entity names: "Zachary Gonzalez,
28 LLC", and "Pacific Loan Solutions, Inc." ("PLS"). As used in this NOTICE OF
DISCIPLINARY CHARGES, references to "Respondent" mean either Respondent, "Zachary
Gonzalez, LLC", and/or PLS.

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Rules of Professional Conduct, Rule 1-400(C)
[Solicitation]

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15. By sending the letter to Rodriguez, Respondent willfully made a solicitation to a prospective client with whom Respondent had no family or prior professional relationship.

COUNT 4

Case No. 09-O-13845
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

16. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

17. Count 3 is incorporated by reference.

18. Luna, along with other Wescom account holders who received letters from Respondent purporting to be from Wescom, brought his letter from Respondent to Christina Miller, an attorney representing Wescom Central Credit Union. Miller informed Luna that Wescom was not the sender of the letter.

19. At the time Respondent sent the letter to Luna, he knew that his representation that the letter was from "WESCOM CU" was false.

20. By sending a letter to Luna which falsely purported to be from "WESCOM CU," Respondent willfully committed an act involving moral turpitude, dishonesty or corruption.

COUNT 5

Case No. 09-O-17413
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

21. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

22. In or about February 2009, Respondent's employee, with Respondent's authorization, telephoned Victor Salaiza, with whom Respondent had no family or prior professional relationship, advertising Respondent's home mortgage loan modification services. Respondent's employee invited Salaiza to visit Respondent's office to discuss a home mortgage loan modification.

1 23. On or about February 12, 2009, Salaiza met two of Respondent's employees at
2 Respondent's offices. Respondent's employees asserted to Salaiza, with Respondent's
3 authorization, that Respondent could obtain a home mortgage loan modification for Salaiza in
4 30-90 days, and that Respondent was "the best in modifying loans." They also showed Salaiza,
5 with Respondent's authorization, "samples" of modifications they told him Respondent had
6 already achieved for other clients.

7 24. On or about February 12, 2009, Salaiza employed Respondent to negotiate and
8 obtain for him a home mortgage loan modification, and paid the first installment of an advanced
9 fee, which, according to Respondent's Residential Loan Modification Agreement
10 ("Agreement"), was calculated as "1.5% of [Salaiza's] current loan amount." Between that date
11 and March 25, 2009, Salaiza paid Respondent a total advanced fee in the sum of \$8,000.

12 25. After paying Respondent his advanced fee and submitting to Respondent all the
13 documentation Respondent had requested, Salaiza heard nothing further concerning the status of
14 his loan modification. After receiving Salaiza's advanced fee, Respondent provided no legal
15 services of any value to Salaiza in connection with negotiating and/or obtaining a home
16 mortgage loan modification.

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18 26. By not performing any legal services of any value to Salaiza, including, but not
19 limited to, negotiating and obtaining a home mortgage loan modification, Respondent
20 intentionally, recklessly, or repeatedly failed to perform legal services with competence.

21 **COUNT 6**

22 Case No. 09-O-17413
23 Rules of Professional Conduct, rule 4-200(A)
 [Unconscionable Fee]

24 27. Respondent wilfully violated Rules of Professional Conduct, rule 4-200(A), by
25 entering into an agreement for, charging, or collecting an unconscionable fee, as follows:

26 28. Count 5 is incorporated by reference.

27 29. By entering into an agreement for, charging, and collecting an advanced fee from
28 Salaiza calculated as 1.5% of Salaiza's current loan amount, in the sum of \$8,000 for a home

1 mortgage loan modification, Respondent willfully entered into an agreement for, charged, and/or
2 collected an unconscionable fee.

3 **COUNT 7**

4 Case No. 09-O-17413

5 Rules of Professional Conduct, rule 3-700(D)(2)
6 [Failure to Refund Unearned Fees]

7 30. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
8 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

9 31. Count 5 is incorporated by reference.

10 32. In or about September 2009, Salaiza called Respondent's office and terminated
11 Respondent's representation and demanded a full refund of the \$8,000 advanced fee.

12 33. On or about September 28, 2009, Respondent sent Salaiza a "Notice of
13 Cancellation" in which Respondent asserted that Salaiza was entitled to a refund of only \$4,000
14 of the money he had paid to them. Thereafter, Respondent forwarded to Salaiza a partial refund
15 in the amount of \$4,000.

16 34. By not refunding to Salaiza the balance of his unearned advanced fee upon
17 Salaiza's demand therefor, Respondent willfully failed to refund promptly any part of a fee paid
18 in advance that has not been earned.

19 **COUNT 8**

20 Case No. 09-O-17413

21 Rules of Professional Conduct, rule 4-100(B)(3)
22 [Failure to Render Accounts of Client Funds]

23 35. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by
24 failing to render appropriate accounts to a client regarding all funds coming into Respondent's
25 possession, as follows:

26 36. Counts 5 and 7 are incorporated by reference.

27 37. At no time has Respondent rendered to Salaiza an accounting of his unearned
28 advanced fee.

1 38. By not rendering to Salaiza an accounting of his unearned advanced fees,
2 Respondent wilfully failed to render appropriate accounts to a client regarding all funds coming
3 into Respondent's possession.

4 **COUNT 9**

5 Case No. 09-O-17413
6 Business and Professions Code, section 6106
7 [Moral Turpitude - Misrepresentation]

8 39. Respondent wilfully violated Business and Professions Code, section 6106, by
9 committing an act involving moral turpitude, dishonesty or corruption, as follows:

10 40. Count 5 is incorporated by reference.

11 41. The representations by Respondent's employees, authorized by Respondent, that
12 Respondent could obtain a home mortgage loan modification for Salaiza in 30-90 days, and that
13 Respondent was "the best in modifying loans," were false, and Respondent either knew them to
14 be false or was grossly negligent in not knowing they were false.

15 42. The "samples" of modifications which Respondent's employees showed to
16 Salaiza (with Respondent's authorization), and which they told him (also with Respondent's
17 authorization) that Respondent had already achieved for other clients, were false, and
18 Respondent either knew they were false or was grossly negligent in not knowing they were false.

19 43. By authorizing representations to Salaiza which he either knew were false or was
20 grossly negligent in not knowing were false, Respondent wilfully committed an act or acts
21 involving moral turpitude, dishonesty or corruption.

22 **COUNT 10**

23 Case No. 09-O-17413
24 Business and Professions Code, section 6106
25 [Moral Turpitude]

26 44. Respondent wilfully violated Business and Professions Code, section 6106, by
27 committing an act involving moral turpitude, dishonesty or corruption, as follows:

28 45. Count 5 is incorporated by reference.

 46. Included among the documents Respondent required Salaiza to execute in order to

1 employ Respondent was a "NOTICE OF RIGHT TO RESCISSION," which provided, in
2 pertinent part, that : "You have the legal right to rescind or cancel this contract without cost to
3 you, but you must give notice of your decision to cancel within three (3) business days from the
4 date you signed the Loan Modification Agreement. The RIGHT TO CANCEL expiration date is
5 to be three (3) business days after the above transaction date. Begin counting the 3 days on the
6 day following the execution of said agreement and include Saturdays and exclude Holidays in
7 the three-day . [...] You may use any written statement signed and dated by you that states your
8 intention to cancel."
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10 47. The "NOTICE OF RIGHT TO RESCISSION" and the "RIGHT TO CANCEL"
11 described in Respondent's advanced fee agreement were false statements of Salaiza's rights to
12 terminate Respondent and to obtain a refund of unearned advanced fees, and Respondent either
13 knew they were false or was grossly negligent in not knowing they were false.
14

15 48. By misrepresenting to Salaiza nonexistent limitations on his rights to terminate
16 Respondent and to obtain a refund of unearned advanced fees, Respondent committed an act
17 involving moral turpitude, dishonesty or corruption.

18 **COUNT 11**

19 Case No. 09-O-17413
20 Rules of Professional Conduct, Rule 1-400(C)
[Solicitation]

21 49. Respondent wilfully violated Rules of Professional Conduct, rule 1-400(C), by
22 making a solicitation to a prospective client with whom Respondent had no family or prior
23 professional relationship, as follows:

24 50. Count 5 is incorporated by reference.

25 51. By authorizing his employees to call Salaiza, Respondent willfully made a
26 solicitation to a prospective client with whom he had no family or prior professional relationship.

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Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

52. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by

53. In or about April 2009, Respondent's employee, with Respondent's authorization,

54. On or about May 2, 2009, Lamers employed Respondent to negotiate and obtain a

55. Respondent's advanced fee was calculated as "1.5% of [Lamers's] total loan

56. Between in or about June 2009 and September 2009, Lamers called Respondent

57. Lamers then called Bank of America, and was informed that no loan modification

1 fee, Respondent provided no legal services of any value to Lamers in connection with
2 negotiating and/or obtaining a home mortgage loan modification.

3 58. By not providing any legal services of any value to Lamers in connection with
4 negotiating and/or obtaining a home mortgage loan modification, Respondent intentionally,
5 recklessly, or repeatedly failed to perform legal services with competence.

6 **COUNT 13**

7 Case No. 09-O-18914
8 Rules of Professional Conduct, rule 4-200(A)
9 [Unconscionable Fee]

10 59. Respondent wilfully violated Rules of Professional Conduct, rule 4-200(A), by
11 entering into an agreement for, charging, or collecting an unconscionable fee, as follows:

12 60. Count 12 is incorporated by reference.

13 61. By entering into an agreement for, charging, and collecting an advanced fee from
14 Lamers calculated as 1.5% of Lamers's current loan amount, in the sum of \$4,324 for a home
15 mortgage loan modification, Respondent willfully entered into an agreement for, charged, and/or
16 collected an unconscionable fee.

17 **COUNT 14**

18 Case No. 09-O-18914
19 Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

20 62. Respondent wilfully violated Business and Professions Code, section 6068(m), by
21 failing to respond promptly to reasonable status inquiries of a client, as follows:

22 63. Count 12 is incorporated by reference.

23 64. In or about October 2009, Lamers sent Respondent a letter in which he requested
24 a full refund of the \$4,324 he had paid to him, effectively terminating Respondent's
25 employment. Respondent received the letter but did not respond to it.

26 65. By not responding to Lamers's October 2009 refund demand, Respondent
27 willfully failed to respond promptly to reasonable status inquiries of a client.

1 **COUNT 15**

2 Case No. 09-O-18914
3 Rules of Professional Conduct, rule 3-700(D)(2)
4 [Failure to Refund Unearned Fees]

5 66. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
6 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

7 67. Counts 12 and 14 are incorporated by reference.

8 68. After receiving no response to his refund demand, Lamers employed another
9 lawyer to assist in his refund attempt. In or about December 2009, Lamers's new attorney wrote
10 a letter to Respondent and requested a complete refund of Lamers's advanced fee. On or about
11 December 10, 2009, Respondent sent Lamers's attorney a check in the amount of \$1,729.60 as a
12 partial refund.

13 69. Lamers eventually commenced fee arbitration against Respondent, and on or
14 about April 2, 2010, the Riverside County Bar Association Fee Arbitration Program awarded
15 Lamers a complete refund in the sum of \$2,594.40 (the balance of the \$4,324 less the previous
16 partial refund), plus the arbitration filing fee. Respondent was served a copy of the Findings and
17 Award by the Riverside y Bar Association, but has neither responded nor paid the award, nor
18 provided Lamers an accounting for his advanced fee.
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20 70. By not refunding to Lamers the balance of his unearned advanced fee upon
21 Lamers's demand therefor, Respondent willfully failed to refund promptly any part of a fee paid
22 in advance that has not been earned.

23 **COUNT 16**

24 Case No. 09-O-18914
25 Rules of Professional Conduct, rule 4-100(B)(3)
26 [Failure to Render Accounts of Client Funds]

27 71. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by
28 failing to render appropriate accounts to a client regarding all funds coming into Respondent's
possession, as follows:

81. By authorizing his representatives to call Lamers, Respondent willfully made a solicitation to a prospective client with whom he had no family or prior professional relationship.

COUNT 19

Case No. 09-O-19279

Rules of Professional Conduct, Rule 1-400(C)
[Solicitation]

82. Respondent wilfully violated Rules of Professional Conduct, rule 1-400(C), by making a solicitation to a prospective client with whom Respondent had no family or prior professional relationship, as follows:

83. In approximately May 2009, Respondent sent a letter to Eva Torres, with whom Respondent had no family or prior professional relationship, which purported to be from "OPTEUM FINANCIAL SERVICES LLC," Torres's home mortgage lender.

84. In the letter to Torres, Respondent stated that "This letter is being sent pursuant to California Code section [sic] 2923.5². We have made several attempts both by phone and mail to discuss your possible options. OPTEUM FINANCIAL SERVICES LLC realizes that sometimes things happen that are out of your control. However, we can not [sic] help you if we can not [sic] discuss possible options with you. We would like to talk you [sic] about your current loan situation to determine if you qualify. Please call us at 877-597-7779, so we can discuss in greater detail this opportunity to help you save your home." Nowhere on the letter were the words "ADVERTISEMENT", "NEWSLETTER", or any similar language that would have identified the letter as a solicitation.

85. On or about June 4, 2009, Torres employed Respondent to negotiate a home mortgage loan modification, and paid an advanced fee of \$2,700, as the initial installment on a total advanced fee of \$5,400. Respondent's advanced fee was calculated as "1.5% of [Torres's] total loan balance [,]" according to Respondent's advanced fee agreement.

86. Among the documents Respondent required Torres to execute was a "Notice of Right of Rescission" which provided that Torres had "the legal right to rescind or cancel this

² California *Civil Code* section 2923.5 addresses the filing of Notices of Default on Mortgages. The top of the letter read "Notice Date: May 8, 2009."

1 contract without cost to [her], but [Torres] must give notice of [her] decision to cancel within
2 three (3) business days from the date [she] signed the Loan Modification Agreement.” The
3 Notice of Right of Rescission further provided that “you may use any written statement signed
4 and dated by you that states your intention to cancel.”

5 87. Also among the documents Respondent required Torres to execute was a
6 document entitled “Stopped or Bounced Checks” which stated “IF YOU’RE [sic] CHECK
7 BOUNCES OR PAYMENT IS STOPPED, YOU COULD BE LIABLE FOR THREE TIMES
8 THE AMOUNT OF THE CHECK UP TO \$1,500.00 AS WELL AS ATTORNEY FEES,
9 COURT COSTS, AND SERVICE COSTS” and cited California Civil Code, section 1719, in
10 support of that proposition. The “Stopped or Bounced Checks” notice also included an
11 underlined warning that “Bad check writers also face criminal penalties.”

12 88. On or about June 5, 2009, Torres faxed to Respondent’s office a letter in which
13 she informed Respondent “I would like to cancel my loan modification agreement with Pacific
14 Loan Solutions and Attorney Zachary Gonzalez. Please return my check #354 and 355 to my
15 property address[.] Thank you kindly for your time. ... Please confirm this fax. ” Instead of
16 refunding Torres her advanced fee, Respondent deposited the check on June 10, 2009.
17 Respondent performed no legal services of any value to Torres in connection with her loan
18 modification. Respondent did not respond to Torres’s request for confirmation of her fax.

19 89. Respondent has not refunded Torres’s advanced fee nor provided her any
20 accounting for the advanced fee.

21 90. By sending the letter to Torres, Respondent willfully made a solicitation to a
22 prospective client with whom he had no family or prior professional relationship.

23 **COUNT 20**

24 Case No. 09-O-19279
25 Rules of Professional Conduct, rule 4-200(A)
[Unconscionable Fee]

26 91. Respondent wilfully violated Rules of Professional Conduct, rule 4-200(A), by
27 entering into an agreement for, charging, or collecting an unconscionable fee, as follows:

28 92. Count 19 is incorporated by reference.

93. By entering into an agreement for, charging, and collecting an advanced fee from Torres calculated as 1.5% of Torres's current loan amount, in the sum of \$5,400 for a home mortgage loan modification, Respondent willfully entered into an agreement for, charged, and/or collected an unconscionable fee.

COUNT 21

Case No. 09-O-19279
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

94. Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client, as follows:

95. Count 19 is incorporated by reference.

96. By not responding to Torres's fax dated June 5, 2009, Respondent willfully failed to respond promptly to reasonable status inquiries of a client.

COUNT 22

Case No. 09-O-19279
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

97. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

98. Count 19 is incorporated by reference.

99. By not providing Torres a refund of her unearned advanced fee upon her demand therefor on June 5, 2009, Respondent willfully failed to refund promptly any part of a fee paid in advance that has not been earned.

COUNT 23

Case No. 09-O-19279
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

100. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by failing to render appropriate accounts to a client regarding all funds coming into Respondent's possession, as follows:

101. Count 19 is incorporated by reference.

102. By not rendering to Torres an accounting of her unearned advanced fees, Respondent willfully failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession.

COUNT 24

Case No. 09-O-19279

Business and Professions Code, section 6106

[Moral Turpitude - Misrepresentation]

103. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

104. Count 19 is incorporated by reference.

105. At the time Respondent sent the letter to Torres, he knew that his representation that the letter was from the "OPTEUM FINANCIAL SERVICES LLC" was false.

106. By sending a letter to Torres which falsely purported to be from “OPTEUM FINANCIAL SERVICES LLC,” Respondent willfully committed an act involving moral turpitude, dishonesty or corruption.

COUNT 25

Case No. 09-O-19279

Business and Professions Code, section 6106

[Moral Turpitude]

107. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

108. Count 19 is incorporated by reference.

109. Included among the documents Respondent required Torres to execute in order to employ Respondent was a "NOTICE OF RIGHT TO RESCISSION," which provided, in pertinent part, that: "You have the legal right to rescind or cancel this contract without cost to you, but you must give notice of your decision to cancel within three (3) business days from the date you signed the Loan Modification Agreement. The RIGHT TO CANCEL expiration date is

1 to be three (3) business days after the above transaction date. Begin counting the 3 days on the
2 day following the execution of said agreement and include Saturdays and exclude Holidays in
3 the three-day . [...] You may use any written statement signed and dated by you that states your
4 intention to cancel.”

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6 110. The “NOTICE OF RIGHT TO RESCISSION” and the “RIGHT TO CANCEL”
7 were false statements of Torres’s rights to terminate Respondent and to obtain a refund of
8 unearned advanced fees, and Respondent either knew they were false or was grossly negligent in
9 not knowing they were false.

10 111. By misrepresenting to Torres nonexistent limitations on her rights to terminate
11 Respondent and to obtain a refund of unearned advanced fees, Respondent committed an act
12 involving moral turpitude, dishonesty or corruption.

13 **COUNT 26**

14 Case No. 09-O-19316
15 Rules of Professional Conduct, Rule 1-400(C)
16 [Solicitation]

17 112. Respondent wilfully violated Rules of Professional Conduct, rule 1-400(C), by
18 making a solicitation to a prospective client with whom Respondent had no family or prior
19 professional relationship, as follows:

20 113. In or about September 2009, Respondent sent a letter to Martin Duarte, with
21 whom Respondent had no family or prior professional relationship, advertising Respondent’s
22 home mortgage loan modification services. Nowhere on the letter were the words
23 “ADVERTISEMENT”, “NEWSLETTER”, or any similar language that would have identified
24 the letter as a solicitation.

25 114. By sending the letter to Duarte, Respondent willfully made a solicitation to a
26 prospective client with whom Respondent had no family or prior professional relationship.

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1 **COUNT 27**

2 Case No. 09-O-19316
3 Rules of Professional Conduct, rule 4-200(A)
4 [Unconscionable Fee]

5 115. Respondent wilfully violated Rules of Professional Conduct, rule 4-200(A), by
6 entering into an agreement for, charging, or collecting an unconscionable fee, as follows:

7 116. Count 26 is incorporated by reference.

8 117. On or about September 12, 2009, Duarte employed Respondent to negotiate and
9 obtain a home mortgage loan modification on his behalf. On or about September 13, 2009,
10 Duarte wrote a check to Respondent for an advanced fee of \$1,400, as the initial installment on a
11 total advanced fee of \$6,300. Respondent's advanced fee was calculated as "1.5% of [Duarte's]
12 total loan balance [,]" according to Respondent's advanced fee agreement.

13 118. By entering into an agreement for, charging, and collecting an advanced fee from
14 Duarte calculated as 1.5% of Duarte's current loan amount, in the sum of \$6,300 for a home
15 mortgage loan modification, Respondent willfully entered into an agreement for, charged, and/or
16 collected an unconscionable fee.

17 **COUNT 28**

18 Case No. 09-O-19316
19 Business and Professions Code, section 6068(m)
20 [Failure to Respond to Client Inquiries]

21 119. Respondent wilfully violated Business and Professions Code, section 6068(m), by
22 failing to respond promptly to reasonable status inquiries of a client, as follows:

23 120. Count 26 is incorporated by reference.

24 121. Among the documents Respondent required Duarte to execute was a document
25 entitled "Stopped or Bounced Checks" which stated "IF YOU'RE [sic] CHECK BOUNCES OR
26 PAYMENT IS STOPPED, YOU COULD BE LIABLE FOR THREE TIMES THE AMOUNT
27 OF THE CHECK UP TO \$1,500.00 AS WELL AS ATTORNEY FEES, COURT COSTS, AND
28 SERVICE COSTS" and cited California Civil Code, section 1719, in support of that proposition.

1 The "Stopped or Bounced Checks" notice also included an underlined warning that "Bad check
2 writers also face criminal penalties."

3 122. On or about September 15, 2009, an employee of Respondent called Duarte and
4 instructed him to pay the initial installment in cash. On or about September 16, 2009, Duarte's
5 wife drove to Respondent's office and delivered \$1,400 in cash to Respondent. When Mrs.
6 Duarte asked for a receipt, Respondent's employee initially refused to provide one, on the
7 ground that "the person who gives out receipts was not available and had left everything securely
8 under lock and key." Mrs. Duarte demanded a handwritten receipt, which Respondent's
9 employee then provided. Respondent's employee told Mrs. Duarte that she or Duarte could
10 return that afternoon for an invoice.

11 123. Later that day, Duarte returned to Respondent's office for the invoice, but when
12 Duarte returned home he realized the invoice described an incorrect property address. The
13 following day, on or about September 17, 2009, Duarte again returned to Respondent's office,
14 terminated Respondent's employment, and demanded a refund of his advanced fee.
15 Respondent's employee angrily refused to provide the refund, and told Duarte to leave the
16 premises or he would call the police. At the time Duarte terminated Respondent's employment,
17 Respondent had performed no legal services of any value to Duarte.

18 124. Duarte returned to his car in the parking lot of Respondent's office building,
19 where Respondent approached him, introduced himself, and told Duarte he would review
20 Duarte's file and call him the following morning. Respondent never called.

21 125. On or about September 21, 2009, Duarte again returned to Respondent's office,
22 and Respondent refused to provide Duarte a refund. That same day, Duarte called his lender,
23 who informed Duarte that, after Duarte had terminated Respondent's employment, Respondent
24 had submitted loan modification documents to Duarte's lender.

25 126. On or about September 21, 2009, Duarte faxed a letter to Respondent, which
26 Respondent received, repeating his termination of Respondent's employment and repeating his
27 demand for a refund of his advanced fee. Respondent did not respond to Duarte's letter.
28

1 **COUNT 31**

2 Case No. 09-O-19316
3 Business and Professions Code, section 6106
4 [Moral Turpitude]

5 135. Respondent wilfully violated Business and Professions Code, section 6106, by
6 committing an act involving moral turpitude, dishonesty or corruption, as follows:

7 136. Count 26 is incorporated by reference.

8 137. Included among the documents Respondent required Duarte to execute in order to
9 employ Respondent was a list of "CLIENT ACKNOWLEDGEMENTS," one of which provided
10 that "Client understands that once file is received and processed 30% of the fee is not
11 refundable."

12 138. The statement that "once file is received and processed 30% of the fee is not
13 refundable" was a false statement of Duarte's right to terminate Respondent and to obtain a
14 complete refund of unearned advanced fees, and Respondent either knew it was false or was
15 grossly negligent in not knowing it was false.

16 139. By misrepresenting to Duarte a nonexistent limitation on his rights to terminate
17 Respondent and to obtain a complete refund of unearned advanced fees, Respondent committed
18 an act involving moral turpitude, dishonesty or corruption.

19 **COUNT 32**

20 Case No. 10-O-01289
21 Rules of Professional Conduct, Rule 1-400(C)
22 [Solicitation]

23 140. Respondent wilfully violated Rules of Professional Conduct, rule 1-400(C), by
24 making a solicitation to a prospective client with whom Respondent had no family or prior
25 professional relationship, as follows:

26 141. On or about September 10, 2009, Respondent's employee, with Respondent's
27 authorization, telephoned Klara Melman, with whom Respondent had no family or prior
28 professional relationship, offering Respondent's home loan modification services.

142. By authorizing his employee to call Melman, Respondent willfully made a solicitation to a prospective client with whom Respondent had no family or prior professional relationship.

COUNT 33

Case No. 10-O-01289
Rules of Professional Conduct, rule 4-200(A)
[Unconscionable Fee]

143. Respondent wilfully violated Rules of Professional Conduct, rule 4-200(A), by entering into an agreement for, charging, or collecting an unconscionable fee, as follows:

144. Count 32 is incorporated by reference.

145. During her telephone conversation with Respondent's employee on or about September 10, 2009, Melman asked Respondent's employee several questions about Respondent's services, which the employee declined to answer, insisting instead that Melman visit Respondent's office in Riverside and to bring with her certain documents concerning her home mortgage loan.

146. On or about September 16, 2009, Melman, accompanied by her friend, Susan White, traveled to Respondent's office and was met by an employee of Respondent's, a non-lawyer who described himself as "a manager." Respondent's employee asserted to Melman, with Respondent's authorization, that she qualified for a loan modification, which Respondent would handle on her behalf only if she employed Respondent during this meeting.

147. When Melman told the employee that she was only there to get some answers to her questions about Respondent's services, the employee showed her, with Respondent's authorization, "samples" of modifications he asserted Respondent had already achieved for other clients.

148. Respondent's employee asserted to Melman that, if she immediately employed Respondent and signed an engagement agreement, he would offer her "a favor" in the form of a

1 reduced fee of 1.5% of her total mortgage loan, a fee which amounted to \$7,859.00. When
2 Melman replied that she did not have that amount of money available, Respondent's employee
3 told her she could make installment payments: \$2,619 that day, and two post-dated checks in the
4 identical amounts. When Melman said that she did not have her checkbook with her,
5 Respondent's employee responded that he would direct another employee to follow her home
6 and pick up the three checks in person.
7

8 149. Melman asked Respondent's employee if there was a "rescission period" during
9 which Melman could terminate the agreement. Respondent's employee asserted that there was
10 not: Melman could sign the engagement agreement or not, but once signed, said Respondent's
11 employee, "it was a legal contract with an attorney and [she could] not change [her] mind."
12 Respondent's employee identified Respondent as Melman's attorney, who would "protect [her]
13 from foreclosure" as long as she continued to make her payments. Respondent's employee
14 made the above representations with Respondent's authorization.
15

16 150. Melman asked Respondent's employee what would happen if she became unable
17 to pay both her mortgage and Respondent, and Respondent's employee asserted that Respondent
18 would "make the bank 'back-end'" any delinquent mortgage payments, and that it was "better to
19 pay [Respondent] than to pay the bank." Respondent's employee made the above
20 representations with Respondent's authorization.
21

22 151. On or about September 16, 2009, Melman signed Respondent's "Residential Loan
23 Modification Retainer Agreement" ("Agreement") by which she employed Respondent to
24 negotiate and obtain a home mortgage loan modification on her behalf, and gave three checks for
25 \$2,619 each (for a total advanced fee of \$7,857) to Respondent's employee who followed
26 Melman home.
27

28 152. By entering into an agreement for, charging, and collecting an advanced fee from

1 Melman calculated as 1.5% of Melman's current loan amount, in the sum of \$7,857 for a home
2 mortgage loan modification, Respondent willfully entered into an agreement for, charged, and/or
3 collected an unconscionable fee.

4 **COUNT 34**

5 Case No. 10-O-01289
6 Rules of Professional Conduct, rule 3-700(D)(2)
7 [Failure to Refund Unearned Fees]

8 153. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
9 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

10 154. Counts 32 and 33 are incorporated by reference.

11 155. A few weeks after employing Respondent, Melman called Respondent in an
12 attempt to cancel the agreement, but could never get a live person on the phone on any of her
13 numerous calls to Respondent's office. Melman eventually received a return call from
14 Respondent's employee, who left Melman a voicemail message asserting that Respondent was
15 currently working on her loan modification.

16 156. On or about October 11, 2009, Melman called Respondent again, was informed
17 that the employee from whom she had previously received the voicemail message was no longer
18 employed by Respondent, that Melman's case was being handled by another employee, and was
19 transferred to that person's voicemail. Melman left a voicemail message for that employee
20 repeating her desire to terminate Respondent and obtain a refund of her advanced fee. On that
21 same date, Melman read a newspaper article about the enactment of California legislation ("S.B.
22 94") prohibiting the collection by attorneys of advanced fees for loan modifications. Melman
23 then called Respondent again, left a message describing the article she had read, and demanding
24 a refund. That employee returned Melman's call and, with Respondent's authorization,
25 asserted that Melman would not be permitted to cancel the agreement nor obtain a refund.
26 Melman then called Respondent, with whom she had never met nor spoken with previously, and
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1 left another message terminating his employment and demanding a refund. At the time Melman
2 terminated Respondent's employment, Respondent had performed no legal services of any value
3 to Melman.

4 157. When Respondent returned Melman's call, he asserted that she had waited too
5 long to cancel the agreement, since Respondent had already faxed her modification request to her
6 lender. Melman became nervous, and for that reason asked White to call Respondent, due to
7 Melman's insecurity over her English proficiency when upset. White left Respondent a voice
8 mail message. When Respondent returned the message, he repeated to White that Melman could
9 not cancel their agreement nor obtain a refund. White informed Respondent that Melman would
10 then place a stop payment on the two remaining partial fee checks.
11

12 158. On or about October 16, 2009, after White had left several additional voice mail
13 messages to Respondent, Respondent agreed to refund \$1,619 of the initial \$2,619 installment
14 payment. Respondent told White that Melman had to come to Respondent's office in Riverside
15 to pick up the check in person. Melman's other roommate, Christine Cooper, drove Melman to
16 Respondent's office.
17

18 159. On arrival at Respondent's office, Melman was directed to a room to wait for
19 Respondent while Cooper waited in the car. Respondent later entered the room with an
20 employee who introduced himself as the "new manager." That employee did all the talking: he
21 asked why Melman decided to cancel the agreement, told her with a laugh that S.B. 94 was "only
22 good for banks," and that he was willing to refund \$586 of the second initial installment
23 payment. When Melman told him she had placed a stop payment on that check, that employee
24 then said "then I do not owe you anything," ripped up the refund check Melman had traveled
25 there to collect, and instructed her to leave the premises.
26

27 160. When Melman returned to the car and told Cooper what had happened, Cooper
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1 returned to Respondent's office with Melman. Respondent again met with Melman, along with
2 an individual who introduced himself as the company president. Again, Respondent would not
3 speak to Melman nor to Cooper. The "company president" asserted that S.B. 94 was
4 "unconstitutional", that if he wanted to collect advanced fees for loan modifications he could do
5 so, and declined to pay Melman any refund. Cooper asked Respondent if he planned to say
6 anything on the matter; Respondent merely shook his head "no." Melman and Cooper were
7 then escorted off the premises.
8

9 161. To date, Respondent has not provided Melman a refund of, nor an accounting for ,
10 her unearned advanced fee.

11 162. By not providing Melman a refund of her unearned advanced fee upon her
12 demand therefor on or about October 11, 2009, Respondent willfully failed to refund promptly
13 any part of a fee paid in advance that has not been earned.
14

15 **COUNT 35**

16 Case No. 10-O-01289

17 Rules of Professional Conduct, rule 4-100(B)(3)
18 [Failure to Render Accounts of Client Funds]

19 163. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by
20 failing to render appropriate accounts to a client regarding all funds coming into Respondent's
21 possession, as follows:

22 164. Counts 32, 33, and 34 are incorporated by reference.

23 165. By not rendering to Melman an accounting of her unearned advanced fees,
24 Respondent willfully failed to render appropriate accounts to a client regarding all funds coming
25 into Respondent's possession.

26 **COUNT 36**

27 Case No. 10-O-01289

28 Business and Professions Code, section 6106
[Moral Turpitude-Misrepresentation]

166. Respondent wilfully violated Business and Professions Code, section 6106, by

1 committing an act involving moral turpitude, dishonesty or corruption, as follows:

2 167. Counts 32, 33, and 34 are incorporated by reference.

3 168. Respondent either knew, or was grossly negligent in not knowing, that the
4 representations he authorized his employees to make to Melman, including: 1) that Melman
5 could not change her mind about employing Respondent after signing the Agreement, 2) that
6 Respondent would "make the bank 'back-end'" any delinquent mortgage payments, 3) that it
7 was "better to pay [Respondent] than to pay the bank," 4) that Melman could not cancel the
8 Agreement after Respondent had faxed her modification request to her lender, and 5) that S.B. 94
9 did not limit Respondent's right to collect advanced fees for loan modification services, were all
10 false.

11 169. By authorizing his employees to make representations to Melman which
12 Respondent either knew were false or was grossly negligent in not knowing were false,
13 Respondent wilfully committed an act or acts involving moral turpitude, dishonesty or
14 corruption.

15 **COUNT 37**

16 Case No. 10-O-01289

17 Rules of Professional Conduct, rule 3-400(A)
[Limiting Liability to a Client]

18 170. Respondent wilfully violated Rules of Professional Conduct, rule 3-400(A), by
19 contracting with a client prospectively limiting Respondent's liability to the client for
20 Respondent's professional malpractice, as follows:

21 171. Counts 32 and 33 are incorporated by reference.

22 172. Included in the Agreement was a provision described as "LIMITATION OF
23 LIABILITY," which provided that Melman held Respondent and his employees "completely
24 harmless in the event [Melman's] position is too severe to be remedied or [Melman] fails to
25 comply with the new terms of the Loan Modification and as a result [Melman's] home is lost in a
26 Trustee Sale, Deed in Lieu of Foreclosure, and/or any other foreclosure proceedings for any
27 reason."

28 173. By including the "LIMITATION OF LIABILITY" in the Agreement with

1 Melman, Respondent willfully contracted with a client prospectively limiting Respondent's
2 liability to the client for Respondent's professional malpractice.

3 **COUNT 38**

4 Case No. 10-O-03162

5 Rules of Professional Conduct, rule 3-110(A)
6 [Failure to Perform with Competence]

7 174. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
8 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
9 follows:

10 175. In or about September 2009, Respondent sent a letter to Enrique Saavedra, with
11 whom Respondent had no family or prior professional relationship, advertising Respondent's
12 home mortgage loan modification services. Nowhere on the letter were the words
13 "ADVERTISEMENT", "NEWSLETTER", or any similar language that would have identified
14 the letter as a solicitation. Saavedra called the telephone number on the letter and made an
15 appointment for September 5, 2009.

16 176. On or about September 5, 2009, Saavedra went to Respondent's office and met
17 with an employee and discussed the fact that Saavedra was currently behind in his mortgage
18 payments and in danger of foreclosure. Respondent's employee asserted, with Respondent's
19 authorization, that Respondent could help Saavedra lower his mortgage payments with a loan
20 modification. Respondent's employee, also with Respondent's authorization, quoted Saavedra
21 an advanced fee of \$9,350, but agreed to accept an advanced fee of \$7,724.

22 177. On or about September 5, 2009, Saavedra employed Respondent to negotiate and
23 obtain on his behalf a residential loan modification, and paid him an advanced fee of \$7,724,
24 calculated, according to the Residential Loan Modification Retainer Agreement ("Agreement")
25 as "1 1/2 % of [Saavedra's] total loan balance". Saavedra paid Respondent the advanced fee in
26 three (3) post-dated checks: check number 1146, dated September 12, 2009, in the amount of
27 \$3,000, check number 1147, dated October 5, 2009, in the amount of \$3,000, and check number
28 1148, dated November 1, 2009, in the amount of \$1,724. All checks were payable to
Respondent.

1 178. On or about October 29, 2009, Saavedra received a default notice on his home,
2 and immediately called Respondent; Respondent's employee told Saavedra to fax the notice to
3 him. Saavedra asked the employee about the status of his loan modification, and the employee
4 asserted it was still under review, and that he would call him back. The employee did not call
5 Saavedra back.

6 179. On or about November 5, 2009, Saavedra received a letter from his lender
7 denying his loan modification, on the grounds that Respondent did not submit the application on
8 the correct forms, and that all relevant information was not provided. Saavedra again called
9 Respondent, and Respondent's employee asked Saavedra to fax the denial letter to him. The
10 employee then asserted to Saavedra that his loan modification was still in review, and that he
11 would call Saavedra around November 15, 2009. Respondent's employee did not call Saavedra
12 back.

13 180. On or about November 17, 2009, Saavedra again called Respondent's employee,
14 who told Saavedra that he was very busy, but that Saavedra's loan modification was still under
15 review, and that Respondent was negotiating with Saavedra's lender. The employee stated that
16 he would call back with a further update on November 23, 2009. Respondent's employee did not
17 call Saavedra back.

18 181. On or about November 20, 2009, Saavedra called his lender and was informed
19 that his loan modification was not in review, and that there were no ongoing negotiations with
20 Respondent. The lender also informed Saavedra that his house was up for sale on February 3,
21 2010.

22 182. On or about November 20, 2009, Saavedra again called Respondent and related to
23 Respondent's employee the information Saavedra had received from his lender. Respondent's
24 employee said he did not have Saavedra's file in front of him, but that he would obtain it, review
25 the documents, and return Saavedra's call on November 23, 2009. Respondent's employee did
26 not call Saavedra back.

27 183. Between on or about November 24, 2009, and December 1, 2009, Saavedra called
28 Respondent to request the status of the loan modification, was unable to speak with anyone, but

1 left messages for someone to return his calls. No one did.

2 184. On or about December 1, 2009, Saavedra called Respondent and requested to
3 speak with an employee; Respondent's receptionist asserted to Saavedra that someone else
4 would return his call. No one did.

5 185. On or about December 5, 2009, Saavedra went to Respondent's office and spoke
6 with an employee who instructed Saavedra to make an appointment to see Respondent.
7 Saavedra made an appointment for December 7, 2009. On or about December 7, 2009, Saavedra
8 went to Respondent's office for his appointment. An employee asserted to Saavedra that
9 Respondent could not do a loan modification for him, at which point Saavedra terminated
10 Respondent's employment and requested a full refund of the \$7,724 he had paid Respondent.

11 186. At the time Saavedra terminated Respondent and requested a refund of his
12 unearned advanced fee, Respondent had performed no legal services of any value to Saavedra.

13 187. By performing no legal services of any value to Saavedra in connection with
14 negotiating and/or obtaining a home mortgage loan modification, Respondent intentionally,
15 recklessly, or repeatedly failed to perform legal services with competence.

16 **COUNT 39**

17 Case No. 10-O-03162
18 Rules of Professional Conduct, rule 3-110(A)
[Failure to Supervise]

19 188. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
20 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
21 follows:

22 189. Count 38 is incorporated by reference.

23 190. By failing to supervise his employees so as to ensure that Saavedra's reasonable
24 status inquiries were returned by those employees, Respondent intentionally, recklessly, or
25 repeatedly failed to perform legal services with competence.

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Rules of Professional Conduct, rule 4-200(A)
[Unconscionable Fee]

192. Count 38 is incorporated by reference.

COUNT 41

Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

195. Count 38 is incorporated by reference.

197. On or about December 8, 2009, Saavedra, his wife, daughter, and his daughter's

198. Respondent would not answer any of Saavedra's questions. When Saavedra's

1 son-in-law requested a full refund of the money Saavedra paid to Respondent, the son-in-law
2 was told to leave the office.

3 199. Saavedra and his wife continued the meeting with Respondent and his employee,
4 who identified himself as Respondent's "processor", and Saavedra informed Respondent that he
5 was dissatisfied with the way his loan modification had been handled. Saavedra requested to see
6 the paperwork that had been submitted to his lender, but Respondent refused to produce it.
7 Saavedra again requested a full refund of his \$7,724 advanced fee. Respondent asserted that
8 Saavedra was entitled to only a 40% refund, and that the refund check would be available for
9 pick-up in seven (7) days.

10 200. On or about December 17, 2009, Saavedra's wife called Respondent to see if the
11 refund check was ready for pick-up. No one was available, so she left a message requesting a
12 return call. No one returned her call.

13 201. On or about December 18, 2009, Saavedra's wife went to Respondent's office and
14 requested the refund check, was told that she needed an appointment, and then was escorted to a
15 room where an employee of Respondent's asserted to her that she was entitled to only a 10%
16 refund. The employee began to yell at Mrs. Saavedra and told her a 10% refund was all she
17 would receive. Mrs. Saavedra told the employee that Respondent's operation was a "scam", at
18 which point the employee told her she would not get any refund, and told her to leave the office.
19 The employee followed Mrs. Saavedra, yelling at her until she was outside on the sidewalk.

20 202. Thereafter, Respondent did not provide Saavedra a refund of, nor an accounting
21 for, his unearned advanced fee. On or about April 9, 2010, the Riverside Superior Court, Small
22 Claims, awarded Saavedra \$7,500 plus costs in a default judgment against Respondent.
23 Respondent has not paid any portion of that award.

24 203. By not refunding to Saavedra the balance of his unearned advanced fee upon
25 Saavedra's demand therefor, Respondent willfully failed to refund promptly any part of a fee
26 paid in advance that has not been earned.

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Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

204. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by

206. Respondent has not provided an accounting to Saavedra of his unearned advanced

207. By not rendering to Saavedra an accounting of his unearned advanced fees,

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Business and Professions Code, section 6106
[Moral Turpitude-Misrepresentation]

208. Respondent wilfully violated Business and Professions Code, section 6106, by

210. When Respondent authorized his employee, on or about September 5, 2009, to tell Saavedra that Respondent could help Saavedra lower his mortgage payments with a modification, Respondent either knew that statement was false or was grossly negligent in knowing it was false.

211. By authorizing his employee to make a statement to Saavedra that he either knew

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Rules of Professional Conduct, Rule 1-400(C)
[Solicitation]

213. Count 38 is incorporated by reference.

COUNT 45

Rules of Professional Conduct, rule 3-400(A)
[Limiting Liability to a Client]

216. Count 38 is incorporated by reference.

218. By including the "LIMITATION OF LIABILITY" in the Agreement with Saavedra, Respondent willfully contracted with a client prospectively limiting Respondent's liability to the client for Respondent's professional malpractice.

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Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

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1 was her residence. In about January 2010, Castillo obtained the services of a bankruptcy
2 attorney.

3 225. On or about February 1, 2010, Castillo's bankruptcy attorney wrote a letter to
4 Respondent in which she informed Respondent that she was representing Castillo in her
5 bankruptcy, requested Castillo's loan modification file, and requested on Castillo's behalf a full
6 refund of the \$6,506 that Castillo had paid to Respondent for the two loan modifications.

7 226. On or about February 4, 2010, Respondent sent Castillo's bankruptcy attorney a
8 response letter in which he withdrew from Castillo's case and promised to forward her loan
9 modification file to the bankruptcy attorney's office, but denied the requested refund. At the
10 time Respondent withdrew from Castillo's representation, he had performed no legal services of
11 any value to Castillo. In his February 4, 2010 letter, Respondent also promised to prepare an
12 accounting and provide a partial refund per Castillo's retainer agreement.

13 227. To date, Respondent has not provided Castillo a refund of, nor an accounting for,
14 her unearned advanced fee.

15 228. By performing no legal services of any value to Castillo in connection with
16 negotiating and/or obtaining a home mortgage loan modification, Respondent intentionally,
17 recklessly, or repeatedly failing to perform legal services with competence.

18 **COUNT 47**

19 Case No. 10-O-03507
20 Rules of Professional Conduct, rule 4-200(A)
[Unconscionable Fee]

21 229. Respondent wilfully violated Rules of Professional Conduct, rule 4-200(A), by
22 entering into an agreement for, charging, or collecting an unconscionable fee, as follows:

23 230. Count 46 is incorporated by reference.

24 231. By entering into an agreement for, charging, and collecting an advanced fee from
25 Castillo calculated as 1.5% of Castillo's current loan amount, Respondent wilfully entered into
26 an agreement for, charged, and/or collected an unconscionable fee.

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Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

233. Count 46 is incorporated by reference.

COUNT 49

Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

236. Count 46 is incorporated by reference.

COUNT 50

Business and Professions Code, section 6106
[Moral Turpitude-Misrepresentation]

239. Count 46 is incorporated by reference.

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1 [Castillo] shall have the right to rescind this Agreement without any penalty or obligation.” This
2 statement was a false statement of Castillo’s right to terminate Respondent and to obtain a
3 complete refund of unearned advanced fees, and Respondent either knew it was false or was
4 grossly negligent in not knowing it was false.

5 241. By misrepresenting to Castillo a nonexistent limitation on her rights to terminate
6 Respondent and to obtain a complete refund of unearned advanced fees, Respondent committed
7 an act involving moral turpitude, dishonesty or corruption.

8 **COUNT 51**

9 Case No. 10-O-03507
10 Business and Professions Code, section 6106
[Moral Turpitude-Misrepresentation]

11 242. Respondent wilfully violated Business and Professions Code, section 6106, by
12 committing an act involving moral turpitude, dishonesty or corruption, as follows:

13 243. Count 46 is incorporated by reference.

14 244. By authorizing his employee, in or about June, 2009, to make a statement to
15 Castillo (that Respondent was negotiating with her lenders) that he either knew was false or was
16 grossly negligent in not knowing was false, Respondent committed an act involving moral
17 turpitude, dishonesty or corruption.

18 **COUNT 52**

19 Case No. 10-O-03507
20 Rules of Professional Conduct, Rule 1-400(C)
[Solicitation]

21 245. Respondent wilfully violated Rules of Professional Conduct, rule 1-400(C), by
22 making a solicitation to a prospective client with whom Respondent had no family or prior
23 professional relationship, as follows:

24 246. Count 46 is incorporated by reference.

25 247. By authorizing his employee to telephone Castillo advertising his home mortgage
26 loan modification services, Respondent willfully made a solicitation to a prospective client with
27 whom Respondent had no family or prior professional relationship.
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Rules of Professional Conduct, rule 3-400(A)
[Limiting Liability to a Client]

248. Respondent wilfully violated Rules of Professional Conduct, rule 3-400(A), by

249. Count 46 is incorporated by reference.

250. Included in the Agreement was a provision described as "LIMITATION OF

251. By including the "LIMITATION OF LIABILITY" in the Agreement with

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Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

252. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by

253. In about August 2009, Respondent mailed a letter to Gary Johnson, with whom

1 254. On or about September 4, 2009, Johnson employed Respondent and signed a
2 Residential Loan Modification Retainer Agreement ("Agreement"), and agreed to pay
3 Respondent an advanced fee of \$3,070, which the Agreement calculated as "1 1/2 % of
4 [Johnson's] current loan balance."

5 255. On about September 10, 2009, Johnson paid the first installment of his advance
6 fee in the sum of \$1,070; Johnson made additional advanced fee payments to Respondent of
7 \$1,000 on about October 28, 2009 and November 23, 2009, respectively.

8 256. On numerous occasions between about December 2009 and about January 2010,
9 Johnson called Respondent and requested to speak with Respondent or Respondent's employee
10 regarding the status of the loan modification, and on each occasion was told that neither
11 Respondent nor his employee were available to take his calls. On each occasion, Johnson left
12 messages for Respondent or his employee to return the calls. Respondent received all the
13 messages but returned none of them.

14 257. In about February 2010, Johnson was informed by his lender that Respondent had
15 not contacted them concerning a loan modification, and was also informed by his lender that his
16 home would be going into foreclosure soon due to his unpaid mortgage arrears.

17 258. Thereafter, Johnson called Respondent and left several messages, all of which
18 Respondent received, terminating Respondent's employment and requesting a full refund of his
19 \$3,070 advanced fee. At the time Johnson terminated Respondent's employment, Respondent
20 had provided no legal services of any value to Johnson. Respondent never responded to any of
21 Johnson's messages, and to date has not provided Johnson a refund of, nor an accounting for, his
22 unearned advanced fee.

23 259. By performing no legal services of any value to Johnson in connection with
24 negotiating and/or obtaining a home mortgage loan modification, Respondent intentionally,
25 recklessly, or repeatedly failing to perform legal services with competence.

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COUNT 55

Case No. 10-O-03674
Rules of Professional Conduct, rule 4-200(A)
[Unconscionable Fee]

260. Respondent wilfully violated Rules of Professional Conduct, rule 4-200(A), by entering into an agreement for, charging, or collecting an unconscionable fee, as follows:

261. Count 54 is incorporated by reference.

262. By entering into an agreement for, charging, and collecting an advanced fee from Johnson calculated as 1.5% of Johnson's current loan amount, Respondent willfully entered into an agreement for, charged, and/or collected an unconscionable fee.

COUNT 56

Case No. 10-O-03674
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

263. Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client, as follows:

264. Count 54 is incorporated by reference.

265. By not returning Johnson's telephone messages left between about December 2009 and about January 2010, and by not responding to Johnson's voicemail messages terminating Respondent's employment and demanding a refund of his unearned advanced fees, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client.

COUNT 57

Case No. 10-O-03674
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

266. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

267. Count 54 is incorporated by reference.

268. By not refunding to Johnson the balance of his unearned advanced fee upon his demand therefor, Respondent willfully failed to refund promptly any part of a fee paid in

1 advance that has not been earned.

2 **COUNT 58**

3 Case No. 10-O-03674

4 Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

5 269. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by
6 failing to render appropriate accounts to a client regarding all funds coming into Respondent's
7 possession, as follows:

8 270. Count 54 is incorporated by reference.

9 271. By not rendering to Johnson an accounting of his unearned advanced fees,
10 Respondent willfully failed to render appropriate accounts to a client regarding all funds coming
11 into Respondent's possession.

12 **COUNT 59**

13 Case No. 10-O-03674

14 Rules of Professional Conduct, Rule 1-400(C)
15 [Solicitation]

16 272. Respondent wilfully violated Rules of Professional Conduct, rule 1-400(C), by
17 making a solicitation to a prospective client with whom Respondent had no family or prior
18 professional relationship, as follows:

19 273. Count 54 is incorporated by reference.

20 274. By sending a letter to Johnson advertising his home mortgage loan modification
21 services, Respondent willfully made a solicitation to a prospective client with whom Respondent
22 had no family or prior professional relationship.

23 **COUNT 60**

24 Case No. 10-O-03674

25 Rules of Professional Conduct, rule 3-400(A)
[Limiting Liability to a Client]

26 275. Respondent wilfully violated Rules of Professional Conduct, rule 3-400(A), by
27 contracting with a client prospectively limiting Respondent's liability to the client for
28 Respondent's professional malpractice, as follows:

1 employ Respondent, and Respondent's employee informed them he would come to their home to
2 obtain from them post-dated checks for their advanced fee.

3 282. On or about June 9, 2009, Respondent's employee came to the Perez home, and
4 Perez signed a Residential Loan Modification Retainer Agreement ("Agreement") employing
5 Respondent. Perez also gave Respondent's employee three checks (numbers 909, 910 and 911,
6 dated June 9, 2009, June 30, 2009 and July 15, 2009, respectively), payable to Respondent in the
7 amount of \$2,785 each, in the total sum of \$8,355. The Agreement calculated the advanced fee
8 as "1 1/2 % of [Perez's] total loan balance."
9

10 283. In or about November 2009, Perez received a loan modification offer from
11 Respondent, and noticed that the rates were exactly the same as the rates that she had negotiated
12 with her lender herself. Perez called Respondent's office, and was informed that a different
13 employee was now handling their loan modification, and Perez was advised to make an
14 appointment to meet with Respondent. When Perez and her husband met with Respondent, he
15 requested that they be patient until he reviewed the documents again.
16

17 284. Between in or about November 2009 and January 2010, Perez called
18 Respondent's office on numerous occasions and requested to speak with Respondent regarding
19 the status of the loan modification. On each occasion, Perez left a message for Respondent to
20 return her calls. Respondent received all the messages but did not return any of the calls.
21

22 285. On or about January 7, 2010, Perez mailed Respondent a letter, which Respondent
23 received, in which Perez terminated his employment and requested a refund of the \$8,355 dollars
24 he had been paid for their loan modification. Respondent did not respond to the letter. At the
25 time Perez terminated Respondent's employment, Respondent had provided no legal services of
26 any value to Perez.
27

28 286. To date, Perez has not received a refund of, nor an accounting for, her unearned

1 advanced fee.

2 287. By performing no legal services of any value to Perez in connection with
3 negotiating and/or obtaining a home mortgage loan modification, Respondent intentionally,
4 recklessly, or repeatedly failing to perform legal services with competence.

5 **COUNT 62**

6 Case No. 10-O-03809
7 Rules of Professional Conduct, rule 4-200(A)
8 [Unconscionable Fee]

9 288. Respondent wilfully violated Rules of Professional Conduct, rule 4-200(A), by
10 entering into an agreement for, charging, or collecting an unconscionable fee, as follows:

11 289. Count 61 is incorporated by reference.

12 290. By entering into an agreement for, charging, and collecting an advanced fee from
13 Perez calculated as 1.5% of Perez's current loan amount, in the total sum of \$8,355, Respondent
14 willfully entered into an agreement for, charged, and/or collected an unconscionable fee.

15 **COUNT 63**

16 Case No. 10-O-03809
17 Business and Professions Code, section 6068(m)
18 [Failure to Respond to Client Inquiries]

19 291. Respondent wilfully violated Business and Professions Code, section 6068(m), by
20 failing to respond promptly to reasonable status inquiries of a client, as follows:

21 292. Count 61 is incorporated by reference.

22 293. By not returning Perez's telephone messages seeking the status of her loan
23 modification, and by not responding to Perez's letter terminating Respondent's employment and
24 demanding a refund of her unearned advanced fees, Respondent wilfully failed to respond
25 promptly to reasonable status inquiries of a client.

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1 **COUNT 64**

2 Case No. 10-O-03809
3 Rules of Professional Conduct, rule 3-700(D)(2)
4 [Failure to Refund Unearned Fees]

5 294. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
6 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

7 295. Count 61 is incorporated by reference.

8 296. By not refunding to Perez the balance of her unearned advanced fee upon her
9 demand therefor, Respondent willfully failed to refund promptly any part of a fee paid in
10 advance that has not been earned.

11 **COUNT 65**

12 Case No. 10-O-03809
13 Rules of Professional Conduct, rule 4-100(B)(3)
14 [Failure to Render Accounts of Client Funds]

15 297. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by
16 failing to render appropriate accounts to a client regarding all funds coming into Respondent's
17 possession, as follows:

18 298. Count 61 is incorporated by reference.

19 299. By not rendering to Perez an accounting of her unearned advanced fees,
20 Respondent willfully failed to render appropriate accounts to a client regarding all funds coming
21 into Respondent's possession.

22 **COUNT 66**

23 Case No. 10-O-03809
24 Business and Professions Code, section 6106
25 [Moral Turpitude-Misrepresentation]

26 300. Respondent wilfully violated Business and Professions Code, section 6106, by
27 committing an act involving moral turpitude, dishonesty or corruption, as follows:

28 301. Count 61 is incorporated by reference.

302. The Agreement stated that Perez's advanced fee of \$8,355 was "only refundable
until midnight of the third business day following execution of this Agreement during which

1 time [Perez] shall have the right to rescind this Agreement without any penalty or obligation.”
2 This was a false statement of Perez’s rights to terminate Respondent and to obtain a refund of
3 unearned advanced fees, and Respondent either knew it was false or was grossly negligent in not
4 knowing it was false.

5 303. By misrepresenting to Perez a nonexistent limitation on her rights to terminate
6 Respondent and to obtain a refund of unearned advanced fees, Respondent committed an act
7 involving moral turpitude, dishonesty or corruption.

8 **COUNT 67**

9 Case No. 10-O-03809
10 Rules of Professional Conduct, Rule 1-400(C)
[Solicitation]

11 304. Respondent wilfully violated Rules of Professional Conduct, rule 1-400(C), by
12 making a solicitation to a prospective client with whom Respondent had no family or prior
13 professional relationship, as follows:

14 305. Count 61 is incorporated by reference.

15 306. By authorizing his employee to telephone Perez advertising his home mortgage
16 loan modification services, Respondent willfully made a solicitation to a prospective client with
17 whom Respondent had no family or prior professional relationship.

18 **COUNT 68**

19 Case No. 10-O-03809
20 Rules of Professional Conduct, rule 3-400(A)
[Limiting Liability to a Client]

21 307. Respondent wilfully violated Rules of Professional Conduct, rule 3-400(A), by
22 contracting with a client prospectively limiting Respondent's liability to the client for
23 Respondent's professional malpractice, as follows:

24 308. Count 61 is incorporated by reference.

25 309. Included in the Agreement was a provision described as “LIMITATION OF
26 LIABILITY,” which provided that Perez held Respondent and his employees “completely
27 harmless in the event [Perez’s] position is too severe to be remedied or [Perez] fails to comply
28 with the new terms of the Loan Modification and as a result [Perez’s] home is lost in a Trustee

1 Sale, Deed in Lieu of Foreclosure, and/or any other foreclosure proceedings for any reason.”

2 310. By including the “LIMITATION OF LIABILITY” in the Agreement with Perez,
3 Respondent willfully contracted with a client prospectively limiting Respondent's liability to the
4 client for Respondent's professional malpractice.

5 **COUNT 69**

6 Case No. 10-O-03809
7 Business and Professions Code, section 6106
8 [Moral Turpitude]

9 311. Respondent wilfully violated Business and Professions Code, section 6106, by
10 committing an act involving moral turpitude, dishonesty or corruption, as follows:

11 312. Count 61 is incorporated by reference.

12 313. On or about January 19, 2010, Perez and her husband went to Respondent's
13 office. Respondent met them accompanied by an employee who did all the talking. Perez
14 informed Respondent that she was unhappy with the offer he had negotiated, and again requested
15 a refund of the money she had paid to him. Respondent said nothing. Respondent's employee
16 told Mr. Perez he would not be allowed to speak, and asserted that if the Perezes were not now
17 happy with the Agreement, to leave.

18 314. Mr. Perez raised his hand and told Respondent's employee to allow him to speak.
19 Respondent's employee told Mr. Perez that if he did not lower his hand, he would “break his
20 fingers.” Respondent said nothing in response to his employee's threat.

21 315. By saying nothing when his employee threatened to break Mr. Perez's fingers,
22 Respondent adopted and ratified that threat of violence, and thereby committed an act involving
23 moral turpitude, dishonesty or corruption.

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1 COUNT 70

2 Case Nos. 09-O-13589, 09-O-13845,
3 09-O-17413, 09-O-18914, 09-O-19279,
4 09-O-19316, 10-O-01289, 10-O-03162,
5 10-O-03507, 10-O-03674, 10-O-03809
Business and Professions Code, section 6106
[Moral Turpitude- Scheme to Defraud]

6 316. Respondent wilfully violated Business and Professions Code, section 6106, by
7 committing an act involving moral turpitude, dishonesty or corruption, as follows:

8 317. Counts 1 through 69 are incorporated by reference.

9 318. Respondent engaged in a scheme to defraud these clients, by exploiting them for
10 personal gain and accepting employment without an intent to perform.

11 319. By engaging in a scheme to defraud these clients, by exploiting them for personal
12 gain and accepting employment without an intent to perform, Respondent willfully committed an
13 act or acts involving moral turpitude, dishonesty, or corruption.

14 NOTICE - INACTIVE ENROLLMENT!

15 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
16 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
17 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
18 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
19 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
20 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF
PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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NOTICE OF DISCIPLINARY CHARGES

**CASE NUMBER: 09-O-13589; 09-O-13845; 09-O-17413; 09-O-18914; 09-O-19279;
09-O-19316; 10-O-01289; 10-O-03162; 10-O-03507; 10-O-03674; 10-O-03809**

NOTICE OF DISCIPLINARY CHARGES

ZACHARY I. GONZALEZ
11801 PIERCE STREET 2ND FLOOR
RIVERSIDE, CA 92505

N/A

Signed:

Lupe Pacheco-Granados
Declarant